

United States v. Shacar
21-cr-30028-MGM
EXHIBIT “14”

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

_____	x
UNITED STATES OF AMERICA,	: Criminal Action
	:
Plaintiff,	: No. 2:21-cr-00127
	:
v.	:
	:
RAYMOND DUGAN,	: *** REDACTED ***
	:
Defendant.	: APPEAL TRANSCRIPT
_____	x

VOLUME I
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT COURT JUDGE
IN CHARLESTON, WEST VIRGINIA
AUGUST 2, 2022

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript
produced by computer.

Corporal Robert Boggs - Direct (Heinrich)

1 Q. And so that includes a process of installing a program?

2 A. Yes.

3 Q. And what's been marked for ID purposes at Government 7,
4 is that a fair and accurate copy of a Shimcashe report that
5 you produced as part of your analysis of the PNY hard drive
6 recovered on June 11th?

7 A. It is.

8 Q. Is that based on data from the hard drive itself?

9 A. Yes.

10 MR. HEINRICH: Your Honor, at this point I would
11 ask that Government's Exhibit Number 7 be introduced into
12 evidence.

13 THE COURT: Is there objection?

14 MR. SCHLES: No objection, Your Honor.

15 THE COURT: I'm sorry?

16 MR. SCHLES: No objection, Your Honor.

17 THE COURT: It may be admitted.

18 **GOVERNMENT EXHIBIT NUMBER 7 ADMITTED**

19 MR. HEINRICH: Thank you, Your Honor.

20 If I could ask if we could publish Exhibit Number 7,
21 the Shimcashe reports.

22 THE COURT: Exhibit 7 may be published.

23 BY MR. HEINRICH:

24 Q. We see a one-page spreadsheet of sorts here. If we
25 could zoom in on the middle column called key list -- excuse

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1 me -- key last updated.

2 **A.** Uh-huh.

3 **Q.** That entire column or that top row of that column
4 first, the title.

5 And, Corporal, do you mind just explaining to the jury
6 what this column -- this key last updated column is?

7 **A.** Yes. The Shimcashe is located in the Windows registry.
8 Windows registry consists of segments we call hives. In
9 this particular hive is -- these hives are the -- there's
10 keys in these hives that are updated periodically.

11 Now, it's important to note that this date and time
12 that's displayed right here does not mean that that's the
13 exact time that that file was downloaded and/or executed.
14 That's when the key was updated -- the registry key.

15 Now, the registry does update fairly frequently, but
16 that would not be the exact date and time.

17 **Q.** But a close approximation?

18 **A.** Yeah, I mean, it updates fairly frequently. There's
19 really no set time. That's based on the operating system's
20 algorithms for efficiency and speed and things of that.

21 **Q.** So this column would say when a program's registry was
22 updated?

23 **A.** That's when that registry key would have been updated
24 that contains that data, yes.

25 **Q.** And this Shimcashe report that's Government 7, is that

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1 a specific file program that it relates to?

2 **A.** Yeah, these are all referenced to the Tor browser. It
3 shows roughly the dates and times -- at least when the keys
4 were updated -- that it was, in fact, downloaded on -- it
5 looks like at least twice and it had been run the remaining
6 12 times, 11 times. So it had been run and executed
7 multiple times.

8 **Q.** And does this necessarily show every single time that
9 the Tor browser was used?

10 **A.** No, no, these keys typically, if I remember correctly,
11 will hold like the last 25. Some are less, some are more.
12 So this is not representative of everything that's ever been
13 run. This is just some of the recent -- you know, recent
14 ones.

15 **Q.** And is it just one when the program is run or is it
16 when the program is reinstalled?

17 **A.** Ran. That was when the program was ran and -- now, if
18 you notice there's two of them on here that you can see. It
19 says browser, Tor download exe. It's a little bit longer
20 name. Those appear to possibly be the downloads of that
21 executable file.

22 **Q.** Okay.

23 **A.** But that is definitely when that file was executed.

24 **Q.** Okay. So if we could now -- first, I guess, just to
25 clear something up, there is a box right below that. So I

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1 see it says 1/1/2000, 12:00 a.m.

2 Is that, based on your experience, an accurate date?

3 **A.** No, no.

4 **Q.** Why would a date like this be in the spreadsheet?

5 **A.** It could be corrupt data, something that was being
6 prepared to be purged possibly. Sometimes you do get
7 inaccurate date and timestamps. You cannot rely on date and
8 timestamps just totally in and of themselves.

9 **Q.** Go to the box right below this, please.

10 So what does this date represent?

11 **A.** That -- January 30th, 2019, at that time, and that
12 would be -- let's see if has a time. It should be UTC plus
13 or minus zero, yes.

14 THE COURT: You need -- I'm sorry. Speak clearly.

15 **A.** Okay. The time represents UTC, which is what the
16 Windows registry actually keeps time with.

17 BY MR. HEINRICH:

18 **Q.** And based on your -- the spreadsheet that you have in
19 front of you, Government 7, does that appear to be the first
20 time that the Shimcashe report indicates the Tor browser was
21 executed?

22 **A.** Yes, at least the first time that it was recorded that
23 we have a record of. Now, it could have happened before.
24 We can't tell, but I can just tell -- I can tell you based
25 on this record, yes.

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1 Q. But you know at least as of January 30th, 2019, it had
2 been installed or executed?

3 A. Yes.

4 Q. If we could go to box one row below that, please.

5 And, Corporal, this date, November, 4, 2019, if you
6 don't mind just scanning this spreadsheet, is this the last
7 date that you see in the spreadsheet?

8 A. Yes.

9 Q. So this would represent the last known time based on
10 the Shim report that we know the Tor browser was executed?

11 A. Yes, that's what it indicates.

12 Q. You mentioned you could tell a little bit about the
13 file names.

14 Do any of these file names indicate that the event that
15 was recorded is a national installation of the Tor browser?

16 A. That's what this is.

17 Q. So these were all times it was installed?

18 A. These were all times it was executed.

19 Q. Okay. Does that mean --

20 A. That means once -- when you install it, it puts the
21 icon on your computer. When you double click it, that's an
22 execution. You're starting -- you're executing that
23 program.

24 Q. And these executions, are these new installations of
25 the Tor browser or simple use?

Corporal Robert Boggs - Direct (Heinrich)

1 **A.** Use.

2 **Q.** Are any of these related to installation?

3 **A.** I believe that number six and number two would be
4 installations.

5 **Q.** So at least a couple of times --

6 **A.** Because you see the word install? That's actually the
7 execution --

8 **Q.** If I could just time-out.

9 What row are you talking about?

10 **A.** Row two. If you look, you'll see it says install in --
11 in --

12 **Q.** Hang on one second, please.

13 **A.** Yeah.

14 **Q.** File paths there?

15 **A.** Yes. If you look in the file path, you will see --
16 also you'll see, in that file path, the folder downloads.

17 So the file would have been in the downloads folder.

18 That's where it's located. And the Tor browser install for
19 Windows 64 exe. That exe is the installation file that --
20 that puts that program on your computer. So that's where
21 that executable resided and when it was executed and that's
22 the installation.

23 **Q.** So based on this report we know that on or about
24 January 30th the Tor browser was installed?

25 **A.** Yes.

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1 Q. And if there's other dates where it appears it was
2 installed, would that indicate it must have been uninstalled
3 at some point?

4 A. Yes, and that's -- that's not unusual, yeah.

5 MR. SCHLES: Objection. He's speculating, Your
6 Honor.

7 THE COURT: Overruled.

8 BY MR. HEINRICH:

9 Q. And do you mind -- rather than go through each one
10 one-by-one, you mentioned that the first apparent date on
11 there is January 30th and the last one that popped up, I
12 believe, was November 4th of 2019.

13 The rest of the dates that you see below that, are they
14 all -- are they all in between those two dates?

15 A. Yes. It appears so, yes.

16 Let's see. Six, seven, eight, nine, ten -- ten, yes.

17 Q. Okay.

18 A. January to November, yeah.

19 Q. Thank you, sir. I think we can take down the
20 spreadsheet at this point.

21 Did you also, as part of your analysis, look at URLs?

22 A. Yes. The forensic software we use actually goes in and
23 carves and looks for active URLs, which is simply the
24 location -- logical location of a website address.

25 Q. And during your analysis were you able to determine if

Corporal Robert Boggs - Cross (Schles)

Questioning of access
continued after URL
questioning

1 THE WITNES a list.

2 BY MR. SCHLES:

3 Q. Stop. Stop, please.

4 Let me first ask you, do you recognize that document
5 that's been marked as Defendant's Exhibit Number 1 for
6 identification?

7 A. It looks familiar, yes.

8 Q. Does it refresh your recollection as to how many Tor
9 URLs were identified on the PNY hard drive?

10 A. No.

11 Q. It does not?

12 A. It does not reflect -- I -- I believe it was much more
13 than 100. However, do you have the report?

14 Q. You believe it was more.

15 Can you explain why your belief differs so dramatically
16 from the report?

17 A. No. The only explanation I would have I know there
18 were several custom reports made. That was, I believe, one
19 of them when you and -- and the U.S. Attorney's Office came
20 to the lab and I created those custom reports. The only
21 explanation I would have is we exported maybe the first 100.
22 That's it. I don't know.

23 Q. So somewhere along the line a mistake was made?

24 A. Partial.

25 Q. And going back to the Shimcashe, which you discussed on

Corporal Robert Boggs - Cross (Schles)

1 direct examination, I think we both agree that the 1/1/2000
2 must be some kind of placeholder because none of this stuff
3 existed on January 1st, 2000; is that correct?

4 A. That's correct.

5 Q. On 1/30/2019 we have what is an install exe, correct?

6 A. Yes.

7 Q. It's number two in the Shimcashe --

8 A. Yes, sir.

9 Q. -- list?

10 A. Yes, sir.

11 Q. The ones following that are not installations. Those
12 are when the already installed software program was
13 executed, which is a fancy computer guy word for used,
14 correct?

15 A. Yes, sir, that's correct.

16 Q. Is it not correct that the Shimcashe does not show the
17 Tor browser being used on May 25th, 2019?

18 A. Yes, you're correct.

19 Q. But it shows it being used prior to May 25th, 2019?

20 A. Yes.

21 Q. And it shows it being used after May 25th, 2019,
22 correct?

23 A. Yes.

24 Q. So it's not a matter of us only having the most recent
25 uses. There is clearly entries before May 25th and entries

Corporal Robert Boggs - Cross (Schles)

1 after May 25th?

2 **A.** Yes, sir.

3 **Q.** So your analysis would indicate that the Tor browser
4 was not used on May 25th, 2019, to access the dark web,
5 correct?

6 **A.** No, sir. That's --

7 **Q.** How do you explain it?

8 **A.** How do I explain it, it's from the operating system.
9 These are the records -- I can just testify to the recovery
10 of the data. I cannot testify to the exact operation and
11 actions of that operating system.

12 **Q.** So your testimony is not exact and 100 percent
13 accurate, correct?

14 **A.** No, everything I said is absolutely the truth and
15 accurate.

16 **Q.** Well, then, how do you explain the discrepancy between
17 Mr. Fleener testifying under oath that some unidentified
18 foreign agent told him that this --

19 **MR. HEINRICH:** Objection, Your Honor.

20 **BY MR. SCHLES:**

21 **Q.** -- computer was used on --

22 **MR. HEINRICH:** Objection, Your Honor.

23 **BY MR. SCHLES:**

24 **Q.** -- May 25th --

25 **THE COURT:** Well, let him finish the question and

Corporal Robert Boggs - Cross (Schles)

1 hold your answer until I get to rule.

2 Ask your question again.

3 BY MR. SCHLES:

4 **Q.** Can you explain why Agent Fleener testified that he was
5 told by an unidentified foreign agent that this computer
6 that you examined was used with the Tor browser on May 25th,
7 2019, but it doesn't show up in your report?

8 **A.** I cannot --

9 THE COURT: Hold, hold, hold.

10 Objection is what?

11 MR. HEINRICH: Your Honor, my objection is to this
12 witness being cross-examined regarding what a different
13 witness may have said in the trial. I would argue that's
14 improper.

15 THE COURT: He's offered as an expert witness and
16 is testifying about his opinions about how this operates.
17 And I think this goes to his understanding of the
18 operability and the functioning of the computer and I will
19 allow it.

20 Overruled.

21 BY MR. SCHLES:

22 **Q.** Do you remember the question?

23 **A.** Repeat it, please.

24 THE COURT: Do you want to read it back?

25 MR. SCHLES: That would probably be better, Your

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1 Honor.

2 Thank you.

3 ("Can you explain why Agent Fleener testified that he
4 was told by an unidentified foreign agent that this computer
5 that you examined was used with the Tor browser on May 25th,
6 2019, but it doesn't show up in your report?")

7 THE WITNESS: I cannot explain that, no.

8 BY MR. SCHLES:

9 Q. Thank you.

10 And you also testified to finding images that are
11 classified as child pornography in, quote, the unallocated
12 space, correct?

13 A. That's correct.

14 Q. You can testify that you found them in the unallocated
15 space when you conducted the examination, correct?

16 A. They were found in unallocated space and in the thumbs
17 DB cache, yes.

18 Q. You cannot testify as to when those images were first
19 brought to that computer, can you?

20 A. No, sir. No, sir.

21 Q. You can't testify as to how they were brought to that
22 computer, can you?

23 A. No, sir.

24 Q. You can't testify as to when they were moved, if they
25 were moved, correct?

Continued
:excerpt of proposed jury instructions

1 feel like the Court's charge as written sufficiently covers
2 the law of this case and that there is nothing in the
3 evidence that would require a mere presence instruction.

4 MR. SCHLES: Please note my objection, Your Honor.

5 THE COURT: Yes.

6 MR. SCHLES: Also, defendant's proposed
7 instruction number nine, inferences permissible from failure
8 to produce evidence, on page 22.

9 THE COURT: Again, Mr. Schles, I don't think it
10 will aid the jury to give them this instruction, the proper
11 instruction of the law, but I don't know of any witnesses
12 that would -- can you tell me why you think this is
13 necessary?

14 MR. SCHLES: Your Honor, as was testified, the
15 original identification of Mr. Dugan's ISP internet service
16 provider was relayed from a foreign law enforcement agency
17 to HSI Boston and then to Fleener. The government did not
18 call anyone from this foreign law enforcement agency or the
19 person who received the tip from this foreign law
20 enforcement agency.

21 THE COURT: Based on that objection as stated, I
22 overrule it.

23 MR. SCHLES: Please note my objection, Your Honor.

24 THE COURT: That's number nine that's overruled.

25 Anything else?